

Vetter et al., discloses preparation of a formulation of quinolonecarboxylic acid or naphthyridonecarboxylic acid and embonic acid. However, Vetter et al., does not teach or disclose micronized quinolonecarboxylic acid nor micronized naphthyridonecarboxylic acid. Furthermore, Vetter et al., does not teach or disclose a method of preparing a solid dispersion by forming a hydrate of micronized quinolonecarboxylic acid or micronized naphthyridonecarboxylic acid.

Since neither Lange et al., nor Vetter et al., teach each and every limitation of the claimed invention, a proper rejection under 35 U.S.C. § 102(b) has not been established. Accordingly, Applicants respectfully request reconsideration and withdrawal of the of the present rejection.

Rejection Under 35 U.S.C. § 103(a)

The Examiner rejected claims 3-5 under 35 U.S.C. § 103(a) as unpatentable over Lange et al., (U.S. Patent No. 5,152,986) or Vetter et al., (U.S. Patent No. 5,808,076) in view of Pollinger et al., (U.S. Patent No. 5,695,784). (Paper No. 5, pages 3-5). Applicants respectfully traverse.

To properly maintain a rejection under 35 U.S.C. § 103, three conditions must be met. First, the prior art must have suggested to those of ordinary skill in the art that they should make the claimed composition or device or carry out the claimed process. Second, the prior art must also have revealed that in so making or carrying out, those of ordinary skill in the art would have a reasonable expectation of success. Both the suggestion and the reasonable expectation of success must be adequately founded in the prior art and not in the Applicant's disclosure. Finally, the prior art reference must teach or suggest all the claim limitations. *See In re Vaack*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

The invention relates to a solid phase dispersion comprising micronized quinolonecarboxylic acid or micronized naphthyridonecarboxylic acid in an insoluble matrix, a method of preparing a solid dispersion, and a process for improving animal uptake of quinolonecarboxylic acid or naphthyridonecarboxylic acid.

As discussed above, Lange et al., and Vetter et al., do not teach or disclose micronized quinolonecarboxylic acid or micronized naphthyridonecarboxylic acid.

The deficiencies of Lange et al., and Vetter et al., are not remedied by Pollinger et al. Pollinger et al., describes flavor masked pharmaceutical compositions. However, Pollinger et al., does not teach or suggest micronized quinolonecarboxylic acid or micronized naphthyridonecarboxylic acid. Thus, based on the disclosure of Pollinger et al., one skilled in the art would not have been motivated to use micronized quinolonecarboxylic acid or micronized naphthyridonecarboxylic acid to mask ill-flavored compositions with the expected result of obtaining improved tasting therapeutic compositions.

Since the combination of references does not teach every element of the claimed invention, these references cannot be combined to support a rejection of the claims under U.S.C. § 103(a). MPEP § 2143.

It is therefore submitted respectfully that Lange et al., or Vetter et al., either singly or in combination with Pollinger et al., fail to teach or suggest a solid phase dispersion as presently claimed, and that the current invention is novel and nonobvious in view of the prior art references. For the foregoing reasons in this section, Applicants respectfully request reconsideration and withdrawal of the present rejections.

CONCLUSION

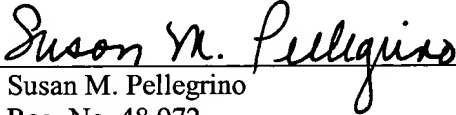
For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Sheikh is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

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